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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/128,753 08/04/98 LIGHTCAP,

D DVL-003PAT

HM22/1230

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EXAMINER

PRYOR, A

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

12/30/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

*more than about 70% usg.*

*bad claim  
42 - usg*

*34°*

*35?*

# Office Action Summary

Application No.  
**09/128,753**

Applicant(s)  
**Lightcap et al**

Examiner  
**Alton Pryor**

Group Art Unit  
**1616**



☒ Responsive to communication(s) filed on Dec 6, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-35 is/are pending in the application.

Of the above, claim(s) 4, 5, 7, 9-24, 28-32, and 34 is/are withdrawn from consideration.

☒ Claim(s) 33 and 35 is/are allowed.

☒ Claim(s) 1-3, 8, and 25 is/are rejected.

☒ Claim(s) 6, 26, and 27 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1616

**Non-Final Action on the Merits**

***Action Summary***

Claims 1-35 are pending. Claims 1-3,8,25 are rejected. Claims 6,26,27 are objected to. Claims 33,35 are allowable. Claims 4,5,7,9-24,28-32,34 are withdrawn from consideration.

**I. Restriction Requirement**

Applicant's election without traverse of Invention I in Paper No. 6 is acknowledged.

**II. Claim Rejection under 35 U.S.C. 112, 2nd paragraph, will not be maintained in light of amendment filed 12/6/99.** The term **ethylene** has been inserted into claim 26.

**III. Rejection of claims under 35 U.S.C. 103(a) according to Thiel and Roe will not be maintained in light of amendment filed 12/6/99.** The references do not teach the composition comprising 40-90% by wt. vegetable oil.

**IV. Rejection of claims under 35 U.S.C. 103(a) according to Wdowik will not be maintained in light of amendment filed 12/6/99.** The reference does not teach the composition comprising 40-90% by wt. vegetable oil.

**V. Rejection of claims under 35 U.S.C. 103(a) according to Inoue and Roe will not be maintained in light of amendment filed 12/6/99.** However, examiner cites a new rejection.

Applicant's arguments with respect to claims 1-3,8,25-27 have been considered but are moot in view of the new ground(s) of rejection.

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***Claim Rejection under 35 U.S.C. 102 (b)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,8,25 are rejected under 35 U.S.C. 102(b) as being anticipated by Inoue on record. The references teaches a composition comprising 10-70% vegetable oil, alkyl sulfate, and 1-10 ethyleneoxide units. On page 10 lines 7-11 of the instant specification, ethylene oxide is taught to function as an emulsifier in the instant composition. On page 10 lines 19-21 of the instant specification, alkyl sulfate is taught to function as a foam agent. However, it is important to note that in a claim to a composition the intended use or the intended function of a composition or its components have no patentable significance. In re Maeder et al. 143 USPQ 248.

***Claim Objection / Allowable Subject Matter***

Claims 6,26,27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach the elected composition comprising the vegetable oils of claim 6. The prior art does not teach the elected composition comprising ethylene oxide -C12 or -C14 alcohols.

Claims 33,35 are allowable, because the prior art does not teach a method that involves the application of the elected composition onto plants.

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*Telephonic Inquiry*

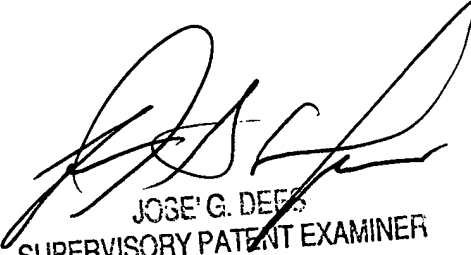
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

ANP

12/22/99

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
1616